



January 21, 2014

VIA ELECTRONIC MAIL

USDA Forest Service, EMC
Attn: Judicial & Admin. Review Group
201 14th St., SW
Mailstop 1104
Washington, DC 20250
objections-chief@fs.fed.us

Re: Objection of Heavenly Mountain Resort Regarding Draft Record of Decision for the Lake Tahoe Basin Management Unit ("LTBMU") Forest Plan Revision

Dear Forest Service Chief Tidwell:

Heavenly Mountain Resort submits this objection to the November 2013 Draft Record of Decision and Final Environmental Impact Statement ("EIS") for the LTBMU Forest Plan. The Draft Record of Decision adopts Alternative E for the revised Forest Plan. The Responsible Official for the LTBMU Forest Plan revision is Randy Moore, Regional Forester for the Pacific Southwest Region. Heavenly submits this objection in a spirit of cooperation to attempt to resolve a few remaining concerns with the Forest Plan.

Heavenly is a year-round destination resort that operates on National Forest System lands pursuant to a long-term special use permit issued under the authority of the Ski Area Permit Act of 1986. See 16 U.S.C. §497b; Forest Plan Map 15 (location of special use permit boundary); Exhibit C (Heavenly special use permit). Heavenly's special use permit covers National Forest System lands on both the LTBMU and on the Humbolt-Toiyabe National Forest.

Heavenly participated in the planning process by submitting comments on the Draft Forest Plan and EIS. A copy of Heavenly's prior comments is attached as Exhibit A. Pursuant to 36 C.F.R. § 219.54(c), below is a statement of the issues to which this objection applies, a concise statement explaining the objection and how Heavenly believes the proposed plan decision may be improved, and a statement cross referencing the portion of Heavenly's prior comment letter that addressed the issue in question.

Heavenly appreciates its close working relationship with the Forest Service, and would like to resolve this objection in a collaborative fashion. Heavenly welcomes the opportunity to discuss these issues with the Reviewing Officer and Responsible Official, as contemplated by 36 C.F.R. § 219.57. Heavenly believes that would be effective and helpful to the resolution of this objection. Thank you for the opportunity to participate in this important planning process.

I. Issue 1: The Forest Plan Improperly Impedes Heavenly's Current Rights with Regard to Terrain Inside its Established Ski Area Special Use Permit Boundary¹

Heavenly's special use permit reflects a long-term management decision by the Forest Service that developed recreation is an appropriate use of those lands. See 16 U.S.C. § 497b(b)(2) (stating that ski area permits "shall ordinarily be issued for a term of 40 years"). When issued, a ski area special use permit "shall encompass such acreage as the Secretary determines sufficient and appropriate to accommodate the permittee's needs for ski operations and appropriate ancillary facilities." Id. § 497b(b)(3).

Forest Plan SG100 adopts as a binding standard a limitation on ski area operations inside existing ski area special use permit boundaries but beyond the current operational boundary. SG100 would impose a 200-acre cap on the increase of "operational footprint acres" of "ski areas and slopes." Forest Plan at 119. This cap applies collectively to each of the four ski resorts that operate on the LTBMU, as well as adjacent resorts that do not currently operate on the LTBMU. The Final EIS for the Forest Plan makes clear that this 200-acre limit: (1) applies to development "within the existing [special use permit boundaries] of ski areas"; but (2) that the Forest Plan does not alter existing permit boundaries. Forest Plan EIS Appx. N at 103.

SG100 impacts Heavenly's existing special use permit rights. Heavenly's permit boundary is larger than its existing operational boundary. See Map 15 (depicting both permit boundary and operational boundary). Heavenly requests the Forest Service to revisit and clarify the 200-acre limit in SG100.

First, Heavenly recognizes that specific development proposals inside special use permits require additional review under the National Environmental Policy Act and approval prior to implementation (see below). But SG100 upsets the settled expectation of existing permit holders and is inconsistent with the past management decision to issue the permit. SG100 effectively revises the terms and permit boundary of existing ski area permits by significantly constraining the ability to develop permitted lands. SG100 makes this revision without following the procedures for terminating or modifying existing permits. See 36 C.F.R. § 251.60 (termination, revocation, and suspension of special use permits). The result is a *de facto* modification of permit boundaries by restricting development inside the permit without the Forest Service following the process required by the permit itself.

Second, the Forest Plan creates a perverse incentive for ski areas to rush to propose the addition of new terrain because it does not indicate how the 200-acre limit in SG100 will be

¹ Heavenly's comments on this issue during the planning process appear on pages 1 and 3 of Exhibit A.

allocated among the multiple resorts that are on or adjacent to the LTBMU. As written, if one resort implements a 200-acre development, the other resorts would be precluded from developing because SG100's cap would be reached. This may encourage resorts to submit proposals to use up the 200-acres before another resort does. The Forest Service should maintain its methodical planning process, not encourage a development race.

Third, detailed Forest Service procedures govern how planning and development proposals for existing special use permits are to proceed. The ski area operator must prepare a master development plan or "MDP" and submit the MDP to the Forest Service. Exhibit C § I.G (MDP process). The operator must periodically revise this MDP, which describes the conceptual vision of future conditions at the ski area. *Id.* The form permit provides that once the Forest Service "accepts" the MDP, it becomes part of the permit itself. *Id.* The Forest Service then reviews ski area "project proposals" that are consistent with the accepted MDP under its special use permit screening regulations at 36 C.F.R. § 251.54(e). If the Forest Service determines that a development proposal satisfies the screening criteria, the agency reviews the proposal under NEPA. 36 C.F.R. § 251.54(e)(6). SG100 displaces this established planning and development process and replaces it with an inflexible cap. SG100 is contrary to the MDP process described in ski area special use permits because it places a restrictive cap on MDP proposals and development proposals. The Forest Plan should not displace the well defined project approval procedures in this manner.

Suggested Revisions/Clarifications

Delete that portion of SG100 that limits expansion of ski area operational boundaries to 200 acres. Forest Plan at 119. State that development proposals inside ski area special use permits will be evaluated pursuant to permit terms and applicable regulations and policy.

II. Issue 2: The Forest Service Should Clarify That LTBMU Forest Plan Direction Does Not Apply to Activities Outside the LTBMU²

Heavenly spans lands both in the LTBMU and on the Humbolt-Toiyabe National Forest. If the Forest Service does not remove the 200-acre limit in SG100, it should at least clarify that SG100 and other Forest Plan management direction applies only to activities on the LTBMU. The Forest Service should clarify that any development on the Humbolt-Toiyabe National Forest would not count against SG100's 200-acre limit, and that other management direction in the

² Heavenly's comments on this issue during the planning process appear on pages 1 and 3 of Exhibit A.

LTBMU Forest Plan does not apply to that portion of Heavenly outside the LTBMU on the Humbolt-Toiyabe National Forest.

Suggested Revisions/Clarifications

Clarify that SG100 and other LTBMU Forest Plan management direction does not apply to activities at Heavenly that are outside the LTBMU.

III. Issue 3: The Forest Plan Should Not Adopt a Whitebark Pine Species Refuge Area Inside Heavenly's Permit and Operational Boundaries; Whitebark Pine Conservation at Heavenly is Appropriately Addressed in a 2013 MOU³

Heavenly and the Forest Service have been working collaboratively for over a year to establish a conservation framework for Whitebark Pine, both within the special use permit boundary and in the highest value habitat outside the permit boundary. These efforts culminated in Heavenly and the Forest Service signing an MOU regarding conservation efforts in 2013.

The Forest Plan adopts Species Refuge Areas ("SRA") for Whitebark Pine. Forest Plan at 35-36; Map 14.⁴ One of these SRAs is located within the permit and operational boundaries of Heavenly. See Forest Plan Map 14 (SRAs) and 15 (permit and operational boundary). The Forest Plan directs the Forest Service to "develop a unit-wide whitebark pine conservation strategy" and then includes a guideline that requires all actions to be "consistent with habitat and population recovery objectives outlined [in] conservation strategies and recovery plans." Forest Plan at 61, 117. Heavenly believes that direction contained in a unit-wide conservation strategy for Whitebark Pine is not appropriate for the particular management needs inside the operational boundary of a ski area.

Whitebark Pine conservation inside a developed ski area such as Heavenly is best addressed with resort-specific management direction, such as that contained in Heavenly's 2013 MOU with the LTBMU. See Exhibit B. For example, conservation within a ski area boundary raises different issues than conservation in a wilderness area. See Forest Plan Map 14 (location of Whitebark Pine SRAs). Because Heavenly has already entered into a comprehensive MOU to address Whitebark Pine, the Forest Plan should not establish an overbroad SRA at the resort.

³ Heavenly's comments on this issue during the planning process appear on page 4 of Exhibit A.

⁴ Whitebark Pine is not listed as threatened or endangered pursuant to the Endangered Species Act. See 76 Fed. Reg. 42,631 (Jul. 19, 2011) (warranted but precluded finding for Whitebark Pine).

Suggested Revisions/Clarifications

- Remove the Whitebark Pine SRA within the Heavenly operational boundary from the list of SRAs depicted on Forest Plan Map 14.
- If the SRA at Heavenly is not removed, clarify that any future unit-wide conservation plan will consider and defer to existing agreements, such as the 2013 MOU for Whitebark Pine at Heavenly. See Exhibit B.

Thank you for your consideration of this objection. Heavenly looks forward to further discussion of these issues, and toward a continued productive relationship with the Forest Service.



Andrew Strain
Vice President of Planning & Governmental Affairs

EXHIBIT A



August 29, 2012

Draft Land Management Plan
LTBMU
35 College Drive
South Lake Tahoe, CA 96150
comments-pacificsouthwest-ltbmu@fs.fed.us

Comments on the Draft Revised Land and Resource Management Plan

Heavenly Mountain Resort offers the following comments on the Draft Revised Land and Resource Management Plan ("Draft Plan") and Draft Environmental Impact Statement ("DEIS") in the spirit of many years of successful partnership with the Forest Service. We look forward to the completion and implementation of the new Land and Resource Management Plan.

Our general comments are as follows:

1. Heavenly supports the adoption of the Proposed Action as described in Alternative B for the Desired Conditions Vision of the Draft Plan together with the 15% expansion provisions for existing special uses permit boundaries that are included in Alternative C (subject to the clarifications to the expansion provisions described in detail below). Further, Alternatives B and C include the removal of the Maintenance Management prescription for lands within Heavenly's existing Special Use Permit Boundary in order to potentially allow for ski area development. Heavenly supports this management direction because it is consistent with the Forest Service's decision to issue a Ski Area Special Use Permit covering these lands, and Heavenly recommends including corresponding Scenic Quality Strategies that are consistent with the revised prescription.
2. The Draft Plan should better emphasize that high-quality public outdoor recreation should be included as one of the most important goals that the Draft Plan will achieve. As a sustainable resource use, outdoor recreation is clearly aligned with the goals of the TRPA's Regional Plan Update and the Lake Tahoe Prosperity Plan. Public outdoor recreation represents the economic base of our communities around the Lake Tahoe Basin and should be recognized as such.

3. In general, the Draft Plan should recognize and include appropriate provisions for uses and activities at Heavenly that are now allowed based on passage of the Ski Area Recreational Opportunity Enhancement Act of 2011. Heavenly recognizes that the DEIS states on page 3-346 that: "It is anticipated that the variety of summer activities at Heavenly Mountain Resort will increase in the future as authorized by the Ski Area Recreational Opportunity Enhancement Act of 2011." But the Draft Plan continues to view ski areas narrowly. For example, page 83 of the Draft Plan defines ski areas as locations that "accommodate *winter* based recreation activities." The Draft Plan should recognize that ski areas like Heavenly may appropriately provide year-round recreational opportunities on a relatively small footprint in the National Forests.
4. The Draft Plan should further acknowledge that in the future, non-skiing activities will look and feel different than what exists today.¹ This will facilitate a more coordinated planning approach to updating the Heavenly Master Development Plan (MDP) and subsequent consistency review with the Draft Plan.
5. The Draft Plan should recognize the existing Special Use Term Permit for Heavenly Mountain Resort in establishing scenic resources management policies and Standards and Guidelines. The Special Use Permit area has already been reserved for outdoor recreational uses and as such will not always meet backdrop forest visual quality goals. This situation has long been recognized, most recently during the 2007 Heavenly Master Plan as it applied to the Nevada side of the resort which can be seen from the Carson Valley. It will apply to other viewpoints including those within the Lake Tahoe Basin as the Heavenly MDP is implemented over time. Fortunately, the long-distance views to the Heavenly permit area from key viewpoints will substantially reduce the potential for significant visual impacts to occur. The Forest Service should avoid future resource conflicts by harmonizing its visual quality management direction with its prior long-term decision to allocate Heavenly's Special Use Permit area to developed recreation.
6. Heavenly does not support Alternative D which either freezes or reduces the opportunity to upgrade and expand recreation facilities, including those already contained in the accepted 2007 MDP. This alternative will not be

¹ The DEIS notes on page 3-188 that, because of global climate change, "[e]xpanding recreational opportunities to other seasons in ski areas will become increasingly important." Heavenly does not dispute this statement. But the need to be flexible with respect to changing and expanding recreational opportunities is not limited to impacts caused by global climate change. The Draft Plan should recognize the need to flexibly respond to changing user preferences, technology, seasons of use, and other issues affecting recreational preferences that may be difficult to predict today.

responsive to the recreation-based economy of our region and would be inconsistent with an important Desired Condition of the Draft Plan to respond to public demand.

Our specific comments are as follows:

1. Permit boundary expansion and adding summer activities should be included as key implementation strategies under the Recreation Program Strategy.
2. The Forest Service should clarify that any limit on expansion of ski areas in the Draft Plan is a limit on expansion of the Special Use Permit boundary, not a limit on expansion of the operational boundary. The Draft Plan states on page 81 that, for ski areas, "Facility expansion limited to 5% as described in the DEIS." The term "facility" is ambiguous and should be replaced with the term "Special Use Permit boundary." And the DEIS should similarly be clarified. The DEIS clearly states on page 3-371 that the "Existing special use permit boundary [for Heavenly] may expand by 5%" under Alternative B (and by 15% under Alternative C). But the DEIS then includes Table 3-40, that indicates that the *operational boundary* of ski areas within the LTBMU will expand by only 174 acres (or 5%) under Alternative B. This table is misleading because Heavenly has significant acreage within its SUP boundary that is outside its operational boundary that the Draft Plan expressly makes available for expansion (see, for example, DEIS at 3-371).
3. The implementation strategies utilized to modify or expand special use permit area boundaries contained in Alternatives B & C of the Draft Plan should include modification of existing special use permit boundaries as a strategy. As knowledge of ski area planning and design evolves, it may become clear that certain undeveloped areas inside the Special Use Permit area are less suitable for recreation, while certain areas outside the boundary are more suitable for recreation. The Draft Plan and DEIS should expressly state that modification to the Special Use Permit boundary may be beneficial, and is authorized by the Forest Plan provided other resource concerns are addressed.
4. The Built Environment Image Guide design elements for the Pacific North Region which apply here do not properly account for buildings and other structures in the Lake Tahoe Region of the Sierra Nevada Province. This is an ongoing issue when designing buildings for harsh alpine environments with unique building code requirements such as Heavenly. The inclusion of a strategy to encourage use of the "Tahoe Architectural Theme" is a step in the right direction. The Draft Plan should recognize this "disconnect" with the national handbook and allow for the consideration of regional solutions that are better suited to our visual environment as well as the regulatory environment here.

5. Map 14 of the Draft Plan maps "Whitebark Pine Species Refuge Areas" that includes a large area of land within Heavenly's existing Special Use Permit area. We have three concerns with this designation. First, we could not locate policies or Standards and Guidelines in the Draft Plan that provide additional detail. It is unclear why this map is included in the Draft Plan. Second, areas that are included for Refuge status which may be the subject of future policies or Standards & Guidelines are better suited in areas such as the Upper Truckee River headwaters or other similar areas that are managed for conservation or wilderness rather than areas under existing special use permit for developed recreation. Third, if the LTBMU does propose specific management direction for Whitebark Pine – either as part of the planning process currently underway or as a future Forest Plan amendment – Heavenly requests notice and an opportunity to comment on the proposed management direction before it is adopted.
6. Angel's Roost and East Peak should be removed from the list of communications sites shown in Map 8 of the Draft Plan. While Heavenly generally supports the concept of consolidating telecommunications uses, recent experience with commercial cell technology providers has shown that their business and site development goals are inconsistent with the provision of a high-quality outdoor recreation experience.
7. The Scenic Integrity and Scenic Stability ratings shown in Draft Plan Maps 10 and 11 should be modified to more accurately reflect Heavenly's existing and expected visual conditions based on resort operations and the special use permit area of infill or redevelopment that are included in the MDP. It is not realistic to expect that resort operations can meet elevated levels of scenic quality as presently measured by the Forest Service Visual Management or Scenic Quality systems. That is not to say that ski resorts do not possess certain levels of visual quality, but simply reflects the bias of the systems to forested, undeveloped landscape views.
8. The description of Recreation Permitted Uses for Ski Slope/Trail found on page 83 of the Draft Plan should be revised to more accurately reflect a wider range of uses, activities and facilities that are in fact located on National Forest Lands within Special Use Permit boundaries. This includes ski lifts, snowmaking systems, mountain lodges and support buildings and resort infrastructure. As a forward-looking document, the description should also recognize the potential for new summer uses and activities.

We are pleased to further discuss our comments with you at your convenience.

Sincerely,

A handwritten signature in black ink that reads "ANDREW STRAIN". The signature is written in a stylized, cursive-like font with some capitalization.

Andrew Strain
Vice President of Planning & Governmental Affairs

EXHIBIT B

FS Agreement No. 14-MU-11051900-002
Cooperator Agreement No. _____

MEMORANDUM OF UNDERSTANDING
Between
Heavenly Valley, Limited Partnership
And The
USDA, FOREST SERVICE
LAKE TAHOE BASIN MANAGEMENT UNIT

This MEMORANDUM OF UNDERSTANDING (MOU) is hereby made and entered into by and between Heavenly Valley, Limited Partnership, hereinafter referred to as "Heavenly," and the USDA, Forest Service, Lake Tahoe Basin Management Unit, hereinafter referred to as the "U.S. Forest Service."

Background: The U.S. Forest Service - Lake Tahoe Basin Management Unit and Heavenly Mountain Resort have established and maintained a long and successful public-private partnership providing for high-quality public outdoor recreation in a manner consistent with the scenic and natural resource values found within the resort operating boundaries.

An emerging opportunity has been identified to conserve, enhance and interpret the whitebark pine as an important element of the ecosystem found at the resort.

Title: Heavenly Mountain Resort: Whitebark Pine Partnership Action Plan ("Partnership Action Plan")

- I. PURPOSE:** The purpose of this MOU is to document the cooperation between the parties to establish a plan dedicated to the conservation and management of white bark pine stands located within the Heavenly Mountain Resort permit boundary in accordance with the following provisions.

II. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The U.S. Forest Service and Heavenly will work cooperatively to develop a Partnership Action Plan for the existing whitebark pine stands within the Heavenly special use permit boundary in order to maintain a healthy population of whitebark pine within the permit area, while encouraging public recreation and continued development of Heavenly Mountain Resort in accordance with the Master Development Plan (MDP) and the Lake Tahoe Basin Land and Resource Management Plan. The Partnership Action Plan will identify strategies and design features that will be implemented by the U.S. Forest Service and Heavenly, as required by the Authorized Officer.



Subject to Section V.J below and in consideration of the above premises, the parties agree as follows:

III. HEAVENLY SHALL:

- A. Establish a principal point of contact for all matters relating to any and all stages of preparation and implementation of the Partnership Action Plan.
- B. Inventory and assess the existing condition of whitebark pine stands within the Heavenly permit area boundary based on an agreed-upon stand assessment methodology, including field verification.
- C. Develop a methodology for identifying the location, stand condition, and activities associated with whitebark pine stands within the Heavenly Special Use Permit boundary and submit to the U.S. Forest Service for review and approval. This methodology may consider factors such as the stand inventory data, stand exam data, health of individual WBP trees within a stand, proximity of WBP stands to each other and those stands potentially affected by the Heavenly MDP, existing ski area activities, as well as previously accepted projects.
- D. Based on the approved methodology (described above), prioritize for conservation values whitebark pine stands within the permit boundary. Develop a map to visually display the conservation prioritization overlaid with activities that are current, planned, proposed, and or approved. The purpose of this map would be to aid in the coordination of conservation activities for WBP while considering current and future projects and plans documented in the MDP and previously approved projects.
- E. Submit all developed materials (proposed methodologies or field results) for review by the U.S. Forest Service within a reasonable time set by both parties. If Heavenly fails to provide these materials according to the established schedule, the review schedule will be adjusted by the U.S. Forest Service to the extent necessary to provide sufficient time for the U.S. Forest Service to complete reviews.
- F. Work cooperatively with the U.S. Forest Service to identify and prepare conservation actions, including specific activities to enhance or conserve whitebark pine stands.
- G. Incorporate key plan elements and actions into Heavenly's environmental education and interpretation programs for its guests and employees.

**IV. THE U.S. FOREST SERVICE SHALL:**

- A. Establish a Project Manager ("Project Manager") as the principal point of contact for the U.S. Forest Service on all matters relating to the all stages of preparation and implementation of the Partnership Action Plan. The duties of the Project Manager shall include the oversight of all reviews and facilitation of communications between the Forest Service and Heavenly to assure a timely and thorough exchange of relevant information amongst all parties.
- B. Work cooperatively with Heavenly to identify and prepare conservation actions, including specific activities to enhance or conserve whitebark pine stands.
- C. Review and evaluate the materials submitted by Heavenly to maintain responsibility for the accuracy of the submitted information and ensure agreement upon proposed methodologies and conservation actions.
- D. Review all materials (proposed methodologies or field results) submitted by Heavenly within a reasonable time set by both parties. If review cannot be completed according to the established schedule, the U.S. Forest Service will notify Heavenly regarding progress, projected completion, and anticipated delays.
- E. Convene a U.S. Forest Service Interdisciplinary Team ("ID Team") to provide technical guidance to the Authorized Officer and Heavenly regarding any factors to be included or considered during the establishment of the Partnership Action Plan. The ID Team will provide input and guidance on the proposed methodologies, field results, and proposed conservation strategies.

V. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES THAT:

- A. Funding of U.S. Forest Service personnel time associated with the preparation, review, and approval of the Partnership Action Plan will be processed under the Heavenly Valley, Limited Partnership Category 5 Cost Recovery Agreement (CR Agreement # 13MJ-11051900763).
- B. U.S. Forest Service personnel time associated with any future projects proposed and approved under the Partnership Action Plan will be processed under the Heavenly Valley, Limited Partnership Category 5 Cost Recovery Agreement (CR Agreement # 13MJ-11051900763).
- C. The intent of this MOU is to promote the conservation and enhancement of whitebark pine through coordinated management actions and monitoring for this species at Heavenly.
- D. Both parties agree to share accumulated knowledge of whitebark pine for any current or future consultation, conference, or technical assistance requirements needed by the FS for Heavenly projects in order to meet the requirements of the



Endangered Species Act and Forest Service Manual direction for Sensitive Species.

- E. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this agreement.

Principal Cooperator Contacts:

Cooperator Program Contact	Cooperator Administrative Contact
Name: Andrew Strain Address: P.O. Box 2180 City, State, Zip: Stateline, NV 89449 Telephone: (775) 586-2313 FAX: Email: astrain@vailresorts.com	Name: Andrew Strain Address: P.O. Box 2180 City, State, Zip: Stateline, NV 89449 Telephone: (775) 586-2313 FAX: Email: astrain@vailresorts.com

Principal U.S. Forest Service Contacts:

U.S. Forest Service Program Manager Contact	U.S. Forest Service Administrative Contact
Name: Jonathan Cook-Fisher Address: 35 College Drive City, State, Zip: South Lake Tahoe, CA 96150 Telephone: (530) 543-2741 FAX: (530) 543-2693 Email: jcfisher@fs.fed.us	Name: John Hefner Address: 35 College Drive City, State, Zip: South Lake Tahoe, CA 96150 Telephone: (530) 543-2696 FAX: (530) 543-2693 Email: jvhefner@fs.fed.us

- F. ASSURANCE REGARDING FELONY CONVICTION OR TAX DELINQUENT STATUS FOR CORPORATE ENTITIES. This agreement is subject to the provisions contained in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2012, P.L. No. 112-74, Division E, Section 433 and 434 regarding corporate felony convictions and corporate federal tax delinquencies. Accordingly, by entering into this agreement Heavenly acknowledges that it: 1) does not have a tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal violation under any Federal law within 24 months preceding the agreement, unless a suspending and debarring official of the United States Department of Agriculture has considered suspension or debarment is not necessary to protect the interests of the Government. If Heavenly fails to comply with these provisions, the U.S. Forest Service will annul this agreement and may recover any funds Heavenly has expended in violation of sections 433 and 434.



- G. NOTICES. Any communications affecting the operations covered by this agreement given by the U.S. Forest Service or Heavenly is sufficient only if in writing and delivered in person, mailed, or transmitted electronically by e-mail or fax, as follows:

To the U.S. Forest Service Program Manager, at the address specified in the MOU.

To Heavenly, at Heavenly's address shown in the MOU or such other address designated within the MOU.

Notices are effective when delivered in accordance with this provision, or on the effective date of the notice, whichever is later.

- H. PARTICIPATION IN SIMILAR ACTIVITIES. This MOU in no way restricts the U.S. Forest Service or Heavenly from participating in similar activities with other public or private agencies, organizations, and individuals.
- I. ENDORSEMENT. Any of Heavenly's contributions made under this MOU do not by direct reference or implication convey U.S. Forest Service endorsement of Heavenly's products or activities.
- J. NONBINDING AGREEMENT. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this MOU. Nothing in this MOU authorizes any of the parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable, but not limited to: agency availability of appropriated funds and other resources; cooperator availability of funds and other resources; agency and cooperator administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective agreement, each party operates under its own laws, regulations, and/or policies, and any Forest Service obligation is subject to the availability of appropriated funds and other resources. The negotiation, execution, and administration of these prospective agreements must comply with all applicable law



Nothing in this MOU is intended to alter, limit, or expand the agencies' statutory and regulatory authority.

- K. USE OF U.S. FOREST SERVICE INSIGNIA. In order for Heavenly to use the U.S. Forest Service insignia on any published media, such as a Web page, printed publication, or audiovisual production, permission must be granted from the U.S. Forest Service's Office of Communications. A written request must be submitted and approval granted in writing by the Office of Communications (Washington Office) prior to use of the insignia.
- L. MEMBERS OF U.S. CONGRESS. Pursuant to 41 U.S.C. 22, no U.S. member of, or U.S. delegate to, Congress shall be admitted to any share or part of this agreement, or benefits that may arise therefrom, either directly or indirectly.
- M. FREEDOM OF INFORMATION ACT (FOIA). Public access to MOU or agreement records must not be limited, except when such records must be kept confidential and would have been exempted from disclosure pursuant to Freedom of Information regulations (5 U.S.C. 552).
- N. TEXT MESSAGING WHILE DRIVING. In accordance with Executive Order (EO) 13513, "Federal Leadership on Reducing Text Messaging While Driving," any and all text messaging by Federal employees is banned: a) while driving a Government owned vehicle (GOV) or driving a privately owned vehicle (POV) while on official Government business; or b) using any electronic equipment supplied by the Government when driving any vehicle at any time. All cooperators, their employees, volunteers, and contractors are encouraged to adopt and enforce policies that ban text messaging when driving company owned, leased or rented vehicles, POVs or GOVs when driving while on official Government business or when performing any work for or on behalf of the Government.
- O. U.S. FOREST SERVICE ACKNOWLEDGED IN PUBLICATIONS, AUDIOVISUALS AND ELECTRONIC MEDIA. Heavenly shall acknowledge U.S. Forest Service support in any publications, audiovisuals, and electronic media developed as a result of this MOU.
- P. NONDISCRIMINATION STATEMENT – PRINTED, ELECTRONIC, OR AUDIOVISUAL MATERIAL. Heavenly shall include the following statement, in full, in any printed, audiovisual material, or electronic media for public distribution developed or printed with any Federal funding.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs.)



To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

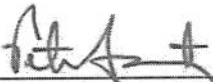
If the material is too small to permit the full statement to be included, the material must, at minimum, include the following statement, in print size no smaller than the text:


"This institution is an equal opportunity provider."

- Q. TERMINATION. Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration.
- R. DEBARMENT AND SUSPENSION. Heavenly shall immediately inform the U.S. Forest Service if they or any of their principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180. Additionally, should Heavenly or any of their principals receive a transmittal letter or other official Federal notice of debarment or suspension, and then they shall notify the U.S. Forest Service without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.
- S. MODIFICATIONS. Modifications within the scope of this MOU must be made by mutual consent of the parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.
- T. COMMENCEMENT/EXPIRATION DATE. This MOU is executed as of the date of the last signature and is effective through 12/31/2018 at which time it will expire, unless extended by an executed modification, signed and dated by all properly authorized, signatory officials.

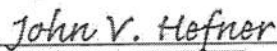


U. AUTHORIZED REPRESENTATIVES. By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this MOU. In witness whereof, the parties hereto have executed this MOU as of the last date written below.


PETER J. SONNTAG, Vice President and General Manager
Heavenly Mountain Resort
12/21/13 Date


NANCY J. GIBSON, Forest Supervisor
U.S. Forest Service, Lake Tahoe Basin Management Unit
1/7/14 Date

The authority and format of this agreement have been reviewed and approved for signature.


JOHN V. HEFNER
U.S. Forest Service Grants Management Specialist
26 November 2013 Date

Burden Statement

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0217. The time required to complete this information collection is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call toll free (866) 632-9992 (voice). TDD users can contact USDA through local relay or the Federal relay at (800) 877-8339 (TDD) or (866) 377-8642 (relay voice). USDA is an equal opportunity provider and employer.

EXHIBIT C

Authorization ID: ELD508901
Contact ID: HEAVENLY
Expiration Date: 05/01/2042
Use Code: 161

FS-2700-5b (8/99)
OMB No 0596 - 0082

U.S. DEPARTMENT OF AGRICULTURE
Forest Service
SKI AREA TERM SPECIAL USE PERMIT
AUTHORITY:
SKI AREA PERMIT ACT October 22, 1986

HEAVENLY VALLEY, LIMITED PARTNERSHIP, a Nevada limited partnership, P.O. BOX 2180, STATELINE, NV, 89449 (hereafter called the holder) is hereby authorized to use National Forest System lands, on the Lake Tahoe Basin Management Unit, for the purposes of constructing, operating, and maintaining a winter sports resort including food service, retail sales, and other ancillary facilities, described herein, known as the Heavenly ski area and subject to the provisions of this term permit. This permit covers 7,050 acres described here as National Forest lands within T.13N., R.19E., Sections 28, 29, 30, 31, 32, T.13N., R.18E., Sections 25, 26, 35 and 36, T.12N., R.18E., Section 1, and 650 within the Toiyabe National Forest described as T.12N., R.19E., a portion of Sections 6 and 7, as shown on the attached map (Exhibit B) dated April 29, 2002.

The following improvements, whether on or off the site, are authorized:

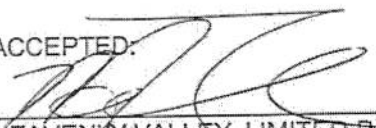
See Exhibit A

Attached Clauses. This term permit is accepted subject to the conditions set forth herein on pages 2 through 17 and to exhibits A to B attached or referenced hereto and made a part of this permit.

The Heavenly Ski Resort Master Plan dated June 1996, adopted by the Tahoe Regional Planning Agency on June 26, 1996 and Approved by the Forest Service Record of Decision on August 20, 1996 is continued under this permit.

THIS PERMIT IS ACCEPTED SUBJECT TO ALL OF ITS TERMS AND CONDITIONS:

ACCEPTED:


HEAVENLY VALLEY, LIMITED PARTNERSHIP

By: VR Heavenly I, Inc., its General Partner
By: Martha D. Rehm, Vice President

May 7, 2002
DATE

APPROVED:


MARIBETH GUSTAFSON, Forest Supervisor

May 7, 2002
DATE

TERMS AND CONDITIONS

I. AUTHORITY AND USE AND TERM AUTHORIZED

A. Authority. This term permit is issued under the authority of the Act of October 22, 1986, (Title 16, United States Code, Section 497b), and Title 36, Code of Federal Regulations, Sections 251.50-251.64.

B. Authorized Officer. The authorized officer is the Forest Supervisor. The authorized officer may designate a representative for administration of specific portions of this authorization.

C. Rules, Laws and Ordinances. The holder, in exercising the privileges granted by this term permit, shall comply with all present and future regulations of the Secretary of Agriculture and federal laws; and all present and future, state, county, and municipal laws, ordinances, or regulations which are applicable to the area or operations covered by this permit to the extent they are not in conflict with federal law, policy or regulation. The Forest Service assumes no responsibility for enforcing laws, regulations, ordinances and the like which are under the jurisdiction of other government bodies.

D. Term. Unless sooner terminated or revoked by the authorized officer, in accordance with the provisions of the authorization, this permit shall terminate on 05/01/2042, but a new special-use authorization to occupy and use the same National Forest land may be granted provided the holder shall comply with the then-existing laws and regulations governing the occupancy and use of National Forest lands. The holder shall notify the authorized officer in writing not less than six (6) months prior to said date that such new authorization is desired.

E. Nonexclusive Use. This permit is not exclusive. The Forest Service reserves the right to use or permit others to use any part of the permitted area for any purpose, provided such use does not materially interfere with the rights and privileges hereby authorized.

F. Area Access. Except for any restrictions as the holder and the authorized officer may agree to be necessary to protect the installation and operation of authorized structures and developments, the lands and waters covered by this permit shall remain open to the public for all lawful purposes. To facilitate public use of this area, all existing roads or roads as may be constructed by the holder, shall remain open to the public, except for roads as may be closed by joint agreement of the holder and the authorized officer.

G. Master Development Plan. In consideration of the privileges authorized by this permit, the holder agrees to prepare and submit changes in the Master Development Plan encompassing the entire winter sports resort presently envisioned for development in connection with the National Forest lands authorized by this permit, and in a form acceptable to the Forest Service. Additional construction beyond maintenance of existing improvements shall not be authorized until this plan has been amended. Planning should encompass all the area authorized for use by this permit. The accepted Master Development Plan shall become a part of this permit. For planning purposes, a capacity for the ski area in people-at-one time shall be established in the Master Development Plan and appropriate National Environmental Policy Act (NEPA) document. The overall development shall not exceed that capacity without further environmental analysis documentation through the appropriate NEPA process.

H. Periodic Revision.

1. The terms and conditions of this authorization shall be subject to revision to reflect changing times and conditions so that land use allocation decisions made as a result of revision to Forest Land and Resource Management Plan may be incorporated.

2. At the sole discretion of the authorized officer this term permit may be amended to remove authorization to use any National Forest System lands not specifically covered in the Master Development Plan and/or needed for use and occupancy under this authorization.

II. IMPROVEMENTS

A. Permission. Nothing in this permit shall be construed to imply permission to build or maintain any improvement not specifically named in the Master Development Plan and approved in the annual operating plan, or further authorized in writing by the authorized officer.

B. Site Development Schedule. As part of this permit, a schedule for the progressive development of the permitted area and installation of facilities shall be prepared jointly by the holder and the Forest Service. Such a schedule shall be prepared by April 1, and shall set forth an itemized priority list of planned improvements and the due date for completion. This schedule shall be made a part of this permit. The holder may accelerate the scheduled date for installation of any improvement authorized, provided the other scheduled priorities are met; and provided further, that all priority installations authorized are completed to the satisfaction of the Forest Service and ready for public use prior to the scheduled due date.

1. All required plans and specifications for site improvements, and structures included in the development schedule shall be properly certified and submitted to the Forest Service at least forty-five (45) days before the construction date stipulated in the development schedule.

2. In the event there is agreement with the Forest Service to expand the facilities and services provided on the areas covered by this permit, the holder shall jointly prepare with the Forest Service a development schedule for the added facilities prior to any construction and meet requirements of paragraph II.D of this section. Such schedule shall be made a part of this permit.

C. Plans. All plans for development, layout, construction, reconstruction or alteration of improvements on the site, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect (in those states in which such licensing is required) or other qualified individual acceptable to the authorized officer. Such plans must be accepted by the authorized officer before the commencement of any work. A holder may be required to furnish as-built plans, maps, or surveys upon the completion of construction.

D. Amendment. This authorization may be amended to cover new, changed, or additional use(s) or area not previously considered in the approved Master Development plan. In approving or denying changes or modifications, the authorized officer shall consider among other things, the findings or recommendations of other involved agencies and whether their terms and conditions of the existing authorization may be continued or revised, or a new authorization issued.

E. Ski Lift Plans and Specifications. All plans for uphill equipment and systems shall be properly certified as being in accordance with the American National Standard Safety Requirements for Aerial Passenger Tramways (B77.1). A complete set of drawings, specifications, and records for each lift shall be maintained by the holder and made available to the Forest Service upon request. These documents shall be retained by the holder for a period of three (3) years after the removal of the system from National Forest land.

III. OPERATIONS AND MAINTENANCE

A. Conditions of Operations. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. Standards are subject to periodic change by the authorized officer. This use shall normally be exercised at least 200 days each year or season. Failure of the holder to exercise this minimum use may result in termination pursuant to VIII.B.

B. Ski Lift, Holder Inspection. The holder shall have all passenger tramways inspected by a qualified engineer or tramway specialist. Inspections shall be made in accordance with the American National Standard Safety Requirements for Aerial Passenger Tramways (B77.1). A certificate of inspection, signed by an officer of the holder's company, attesting to the adequacy and safety of the installations and equipment for public use shall be received by the Forest Service prior to public operation stating as a minimum:

"Pursuant to our special use permit, we have had an inspection to determine our compliance with the American National Standard B77.1. We have received the results of that inspection and have made corrections of all deficiencies noted. The facilities are ready for public use."

C. Operating Plan. The holder or designated representative shall prepare and annually revise by September 1 an Operating Plan. The Plan shall be prepared in consultation with the authorized officer or designated representative and cover winter and summer operations as appropriate. The provisions of the Operating Plan and the annual revisions shall become a part of this permit and shall be submitted by the holder and approved by the authorized officer or their designated representatives. This plan shall consist of at least the following sections:

1. Ski patrol and first aid.
2. Communications.
3. Signs.
4. General safety and sanitation.
5. Erosion control.
6. Accident reporting.
7. Avalanche control.
8. Search and rescue.
9. Boundary management.
10. Vegetation management.
11. Designation of representatives.
12. Trail routes for nordic skiing.

The authorized officer may require a joint annual business meeting agenda to:

- a. Update Gross Fixed Assets and lift-line proration when the fee is calculated by the Graduated Rate Fee System.
- b. Determine need for performance bond for construction projects, and amount of bond.
- c. Provide annual use reports.

D. Cutting of Trees. Trees or shrubbery on the permitted area may be removed or destroyed only after the authorized officer has approved and marked, or otherwise designated, that which may be removed or destroyed. Timber cut or destroyed shall be paid for by the holder at appraised value, provided that the Forest Service reserves the right to dispose of the merchantable timber to others than the holder at no stumpage cost to the holder.

E. Signs. Signs or advertising devices erected on National Forest lands, shall have prior approval by the Forest Service as to location, design, size, color, and message. Erected signs shall be maintained or renewed as necessary to neat and presentable standards, as determined by the Forest Service.

F. Temporary Suspension. Immediate temporary suspension of the operation, in whole or in part, may be required when the authorized officer, or designated representative, determines it to be necessary to protect the public health or safety, or the environment. The order for suspension may be given verbally or in writing. In any such case, the superior of the authorized officer, or designated representative, shall, within ten (10) days of the request of the holder, arrange for an on-the-ground review of the adverse conditions with the holder. Following this review the superior shall take prompt action to affirm, modify or cancel the temporary suspension.

IV. NONDISCRIMINATION. During the performance of this permit, the holder agrees:

A. In connection with the performance of work under this permit, including construction, maintenance, and operation of the facility, the holder shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or handicap. (Ref. Title VII of the Civil Rights Act of 1964 as amended).

B. The holder and employees shall not discriminate by segregation or otherwise against any person on the basis of race, color, religion, sex, national origin, age or handicap, by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally. (Ref. Title VI of the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments, and the Age Discrimination Act of 1975).

C. The holder shall include and require compliance with the above nondiscrimination provisions in any subcontract made with respect to the operations under this permit.

D. Signs setting forth this policy of nondiscrimination to be furnished by the Forest Service will be conspicuously displayed at the public entrance to the premises, and at other exterior or interior locations as directed by the Forest Service.

E. The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States of the State in which the breach or violation occurs.

V. LIABILITIES

A. Third Party Rights. This permit is subject to all valid existing rights and claims outstanding in third parties. The United States is not liable to the holder for the exercise of any such right or claim.

B. Indemnification of the United States. The holder shall hold harmless the United States from any liability from damage to life or property arising from the holder's occupancy or use of National Forest lands under this permit.

C. Damage to United States Property. The holder shall exercise diligence in protecting from damage the land and property of the United States covered by and used in connection with this permit. The holder shall pay the United States the full cost of any damage resulting from negligence or activities occurring under the terms of this permit or under any law or regulation applicable to the national forests, whether caused by the holder, or by any agents or employees of the holder.

D. Risks. The holder assumes all risk of loss to the improvements resulting from natural or catastrophic events, including but not limited to, avalanches, rising waters, high winds, falling limbs or trees, and other hazardous events. If the improvements authorized by this permit are destroyed or substantially damaged by natural or catastrophic events, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. The analysis shall be provided to the holder within six (6) months of the event.

E. Hazards. The holder has the responsibility of inspecting the area authorized for use under this permit for evidence of hazardous conditions which could affect the improvements or pose a risk of injury to individuals.

F. Insurance. The holder shall have in force public liability insurance covering: (1) property damage in the amount of Five Hundred Thousand Dollars (\$500,000.), and (2) damage to persons in the minimum amount of Five Hundred Thousand Dollars (\$500,000.) in the event of death or injury to one individual, and the minimum amount of Five Hundred Thousand Dollars (\$500,000.) in the event of death or injury to more than one individual. These minimum amounts and terms are subject to change at the sole discretion of the authorized officer at the five-year anniversary date of this authorization. The coverage shall extend to property damage, bodily injury, or death arising out of the holder's activities under the permit including, but not limited to, occupancy or use of the land and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by this permit. Such insurance shall also name the United States as an additionally insured. The holder shall send an authenticated copy of its insurance policy to the Forest Service immediately upon issuance of the policy. The policy shall also contain a specific provision or rider to the effect that the policy shall not be cancelled or its provisions changed or deleted before thirty (30) days written notice to the Forest Supervisor, 870 Emerald Bay Road, South Lake Tahoe, CA 96150, by the insurance company.

Rider Clause (for insurance companies)

"It is understood and agreed that the coverage provided under this policy shall not be cancelled or its provisions changed or deleted before thirty (30) days of receipt of written notice to the Forest Supervisor, 870 Emerald Bay Road, South Lake Tahoe, CA 96150, by the insurance company."

VI. FEES

Ski Area Permit Fees. The Forest Service shall adjust and calculate permit fees authorized by this permit to reflect any revisions to permit fee provisions in 16 U.S.C. 497c or to comply with any new permit fee system based on fair market value that may be adopted by statute or otherwise after issuance of this permit.

A. Fee Calculation. The annual fee due the United States for the activities authorized by this permit shall be calculated using the following formula:

$$\text{SAPF} = (.015 \times \text{AGR in bracket 1}) + (.025 \times \text{AGR in bracket 2}) + (.0275 \times \text{AGR in bracket 3}) + (.04 \times \text{AGR in bracket 4})$$

Where:

$$\text{AGR} = [(\text{LT} + \text{SS}) \times (\text{proration \%})] + \text{GRAF}$$

AGR is adjusted gross revenue;

LT is revenue from sales of alpine and nordic lift tickets and passes;

GRAF is gross year-round revenue from ancillary facilities;

Proration % is the factor to apportion revenue attributable to use of National Forest System lands;

SAPF is the ski area permit fee for use of National Forest System lands; and

SS is revenue from alpine and nordic ski school operations.

1. SAPF shall be calculated by summing the results of multiplying the indicated percentage rates by the amount of the holder's adjusted gross revenue (AGR), which falls into each of the four brackets. Follow direction in paragraph 2 to determine AGR. The permit fee shall be calculated based on the holder's fiscal year, unless mutually agreed otherwise by the holder and the authorized officer.

The four revenue brackets shall be adjusted annually by the consumer price index issued in FSH 2709.11, chapter 30. The revenue brackets shall be indexed for the previous calendar year. The holder's AGR for any fiscal year shall not be split into more than one set of indexed brackets. Only the levels of AGR defined in each bracket are updated annually. The percentage rates do not change.

The revenue brackets and percentages displayed in Exhibit 01 shall be used as shown in the preceding formula to calculate the permit fee.

Adjusted Gross Revenue (AGR) Brackets and Associated Percentage Rates
for Use in Determining Ski Area Permit Fee (SAPF)

Revenue Brackets (updated annually by CPI*)
and Percentage Rates

Holder FY	Bracket 1 (1.5%)	Bracket 2 (2.5%)	Bracket 3 (2.75%)	Bracket 4 (4%)
FY 1996 CPI: N/A	All revenue below \$3,000,000	\$ 3,000,000 to <\$15,000,000	\$15,000,000 to \$50,000,000	All revenue over \$50,000,000
FY 1997 CPI: 1.030	All revenue below \$3,090,000	\$ 3,090,000 to <\$15,450,000	\$15,450,000 to \$51,500,000	All revenue over \$51,500,000
FY 1998 CPI: 1.022	All revenue below \$3,158,000	\$ 3,158,000 to <\$15,790,000	\$15,790,000 to \$52,633,000	All revenue over \$52,633,000
FY 1999	All revenue	\$ 3,212,000	\$16,058,000	All revenue

CPI:	below	to	to	over
1.017	\$3,212,000	<\$16,058,000	\$53,528,000	\$53,528,000

FY 2000
and beyond

BRACKETS WILL BE UPDATED ANNUALLY BY CPI*

*The authorized officer shall notify the holder of the updated revenue brackets based on the Consumer Price Index (CPI) which is revised and issued annually in FSH 2709.11, chapter 30.

2. AGR shall be calculated by summing the revenue from lift tickets and ski school operations prorated for use of National Forest System lands and from ancillary facility operations conducted on National Forest System lands.

Revenue inclusions shall be income from sales of alpine and nordic tickets and ski area passes; alpine and nordic ski school operations; gross revenue from ancillary facilities; the value of bartered goods and complimentary lift tickets (such as lift tickets provided free of charge to the holder's friends or relatives); and special event revenue. Discriminatory pricing, a rate based solely on race, color, religion, sex, national origin, age, disability, or place of residence, is not allowed, but if it occurs, include the amount that would have been received had the discriminatory pricing transaction been made at the market price, the price generally available to an informed public, excluding special promotions.

Revenue exclusions shall be income from sales of operating equipment; refunds; rent paid to the holder by subholders; sponsor contributions to special events; any amount attributable to employee gratuities or employee lift tickets; discounts; ski area tickets or passes provided for a public safety or public service purpose (such as for National Ski Patrol or for volunteers to assist on the slope in the Special Olympics); and other goods or services (except for bartered goods and complimentary lift tickets) for which the holder does not receive money.

Include the following in AGR:

- a. Revenue from sales of year-round alpine and nordic ski area passes and tickets and revenue from alpine and nordic ski school operations prorated according to the percentage of use between National Forest System lands and private land in the ski area;
 - b. Gross year-round revenue from temporary and permanent ancillary facilities located on National Forest System lands;
 - c. The value of bartered goods and complimentary lift tickets, which are goods, services, or privileges that are not available to the general public (except for employee gratuities, employee lift tickets, and discounts, and except for ski area tickets and passes provided for a public safety or public service purpose) and that are donated or provided without charge in exchange for something of value to organizations or individuals (for example, ski area product discounts, service discounts, or lift tickets that are provided free of charge in exchange for advertising).
- Bartered goods and complimentary lift tickets (except for employee gratuities, employee lift tickets, discounts, and except for ski area tickets and passes provided for a public safety or public service purpose) valued at market price shall be included in the AGR formula as revenue under LT, SS, or GRAF, depending on the type of goods, services, or privileges donated or bartered; and
- d. Special event revenue from events, such as food festivals, foot races, and concerts. Special event revenue shall be included in the AGR formula as revenue under LT, SS, or GRAF, as applicable. Prorate revenue according to the percentage of use between National Forest System lands and private land as described in the following paragraphs 5 and 6.

3. LT is the revenue from sales of alpine and nordic lift tickets and passes purchased for the purpose of using a ski area during any time of the year, including revenue that is generated on private land (such as from tickets sold on private land).

4. SS is the revenue from lessons provided to teach alpine or nordic skiing or other winter sports activities, such as racing, snowboarding, or snowshoeing, including revenue that is generated on private land (such as from tickets sold on private land).

5. Proration % is the method used to prorate revenue from the sale of ski area passes and lift tickets and revenue from ski school operations between National Forest System lands and private land in the ski area. Separately prorate alpine and nordic revenue with an appropriate proration factor. Add prorated revenues together; then sum them with GRAF to arrive at AGR. Use one or both of the following methods, as appropriate:

a. STFP shall be the method used to prorate alpine revenue. The STFP direction contained in FSM 2715.11c effective in 1992 shall be used. Include in the calculation only uphill devices (lifts, tows, and tramways) that are fundamental to the winter sports operation (usually those located on both Federal and private land). Do not include people movers whose primary purpose is to shuttle people between parking areas or between parking areas and lodges and offices.

b. Nordic trail length is the method used to prorate nordic revenue. Use the percentage of trail length on National Forest System lands to total trail length.

6. GRAF is the revenue from ancillary facilities, including all of the holder's or subholder's lodging, food service, rental shops, parking, and other ancillary operations located on National Forest System lands. Do not include revenue that is generated on private land. For facilities that are partially located on National Forest System lands, calculate the ratio of the facility square footage located on National Forest System lands to the total facility square footage. Special event revenue allocatable to GRAF shall be prorated by the ratio of use on National Forest System lands to the total use.

7. In cases when the holder has no AGR for a given fiscal year, the holder shall pay a permit fee of \$2 per acre for National Forest System lands under permit or a percentage of the appraised value of National Forest System lands under permit, at the discretion of the authorized officer.

B. Fee Payments. Reports and deposits shall be tendered in accordance with the following schedule. They shall be sent or delivered to the collection officer, USDA, Forest Service, at the address furnished by the authorized officer. Checks or money orders shall be made payable to: USDA, Forest Service.

1. The holder shall calculate and submit an advance payment which is due by the beginning of the holder's payment cycle. The advance payment shall equal 20 percent of the holder's average permit fee for 3 operating years, when available. When past permit fee information is not available, the advance payment shall equal 20 percent of the permit fee, based on the prior holder's average fee or projected AGR. For ski areas not expected to generate AGR for a given payment cycle, advance payment of the permit fee as calculated in item A, paragraph 7 (\$2 per acre for National Forest System lands under permit or a percentage of the appraised value of National Forest System lands under permit, at the discretion of the authorized officer) shall be made. The advance payment shall be credited (item B, paragraph 3) toward the total ski area permit fee for the payment cycle.

2. The holder shall report sales, calculate fees due based on a tentative percentage rate, and make interim payments each calendar Month except for periods in which no sales take place and the holder has notified the authorized officer that the operation has entered a seasonal shutdown for a specific period. Reports and payments shall be made by the end of the month following the end of each reportable period. Interim payments shall be credited (item B, paragraph 3) toward the total ski area permit fee for the payment cycle.

3. Within 90 days after the close of the ski area's payment cycle, the holder shall provide a financial statement, including a completed permit fee information form, Form FS-2700-19a, representing the ski area's financial condition at the close of its business year and an annual operating statement reporting the results of operations, including a final payment which includes year-end adjustments for the holder and each subholder for the same period. Any balance that exists may be credited and applied against the next payment due or refunded, at the discretion of the permit holder.

4. Within 30 days of receipt of a statement from the Forest Service, the holder shall make any additional payment required to ensure that the correct ski area permit fee is paid for the past year's operation.

5. Payments shall be credited on the date received by the designated collection officer. If the due date for the fee or fee calculation financial statement falls on a non-workday, the charges shall not accrue until the close of business on the next workday.

6. All permit fee calculations and records of sales are subject to review or periodic audit as determined by the authorized officer. Errors in calculation or payment shall be corrected as needed for conformance with those reviews or audits. In accordance with the Late Payment Interest, Administrative Costs and Penalties clause contained in this authorization, interest and penalties shall be assessed on additional fees due as a result of reviews or audits.

C. Correcting Errors. Correction of errors includes any action necessary to calculate the holder's sales or slope transport fee percentage or to make any other determination required to calculate permit fees accurately. For fee calculation purposes, an error may include:

- a. Misreporting or misrepresentation of amounts;
- b. Arithmetic mistakes;
- c. Typographic mistakes; or
- d. Variation from generally accepted accounting principles (GAAP), when such variations are inconsistent with the terms of this permit.

Correction of errors shall be made retroactively to the date the error was made or to the previous audit period, whichever is more recent, and past fees shall be adjusted accordingly.

D. Late Payment Interest, Administrative Costs and Penalties. Pursuant to 31 U.S.C. 3717, et seq., interest shall be charged on any fee amount not paid within 30 days from the date the fee or fee calculation financial statement specified in this authorization becomes due. The rate of interest assessed shall be the higher of the rate of the current value of funds to the U.S. Treasury (i.e., Treasury tax and loan account rate), as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins annually or quarterly or at the Prompt Payment Act rate. Interest on the principal shall accrue from the date the fee or fee calculation financial statement is due.

In the event the account becomes delinquent, administrative costs to cover processing and handling of the delinquency will be assessed.

A penalty of 6 percent per annum shall be assessed on the total amount delinquent in excess of 90 days and shall accrue from the same date on which interest charges begin to accrue.

Payments will be credited on the date received by the designated collection officer or deposit location. If the due date for the fee or fee calculation statement falls on a non-workday, the charges shall not apply until the close of business on the next workday.

Disputed fees are due and payable by the due date. No appeal of fees will be considered by the Forest Service without full payment of the disputed amount. Adjustments, if necessary, will be made in accordance with settlement terms or the appeal decision.

If the fees become delinquent, the Forest Service will:

Liquidate any security or collateral provided by the authorization.

If no security or collateral is provided, the authorization will terminate and the holder will be responsible for delinquent fees as well as any other costs of restoring the site to its original condition including hazardous waste cleanup.

Upon termination or revocation of the authorization, delinquent fees and other charges associated with the authorization will be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 et seq. Delinquencies may be subject to any or all of the following conditions:

Administrative offset of payments due the holder from the Forest Service.

Delinquencies in excess of 60 days shall be referred to United States Department of Treasury for appropriate collection action as provided by 31 U.S.C. 3711 (g), (1).

The Secretary of the Treasury may offset an amount due the debtor for any delinquency as provided by 31 U.S.C. 3720, *et seq.*)

E. Nonpayment. Failure of the holder to make timely payments, pay interest charges or any other charges when due, constitutes breach and shall be grounds for termination of this authorization. This permit terminates for nonpayment of any monies owed the United States when more than 90 days in arrears.

F. Access to Records. For the purpose of administering this permit (including ascertaining that fees paid were correct and evaluating the propriety of the fee base), the holder agrees to make all of the accounting books and supporting records to the business activities, as well as those of sublessees operating within the authority of this permit, available for analysis by qualified representatives of the Forest Service or other Federal agencies authorized to review the Forest Service activities. Review of accounting books and supporting records shall be made at dates convenient to the holder and reviewers. Financial information so obtained shall be treated as confidential as provided in regulations issued by the Secretary of Agriculture.

The holder shall retain the above records and keep them available for review for 5 years after the end of the year involved, unless disposition is otherwise approved by the authorized officer in writing.

G. Accounting Records. The holder shall follow Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting acceptable to the Forest Service in recording financial transactions and in reporting results to the authorized officer. When requested by the authorized officer, the holder at its own expense, shall have the annual accounting reports audited or prepared by a licensed independent accountant acceptable to the Forest Service. The holder shall require sublessees to comply with these same requirements. The minimum acceptable accounting system shall include:

1. Systematic internal controls and recording by kind of business the gross receipts derived from all sources of business conducted under this permit. Receipts should be recorded daily and, if possible, deposited into a bank account without reduction by disbursements. Receipt entries shall be supported by source documents such as cash-register tapes, sale invoices, rental records, and cash accounts from other sources.
2. A permanent record of investments in facilities (depreciation schedule), and current source documents for acquisition costs of capital items.
3. Preparation and maintenance of such special records and accounts as may be specified by the authorized officer.

VII. TRANSFER AND SALE

A. Subleasing. The holder may sublease the use of land and improvements covered under this permit and the operation of concessions and facilities authorized upon prior written notice to the authorized officer. The Forest Service reserves the right to disapprove subleasees. In any circumstance, only those facilities and activities authorized by this permit may be subleased. The holder shall continue to be responsible for compliance with all conditions of this permit by persons to whom such premises may be sublet. The holder may not sublease direct management responsibility without prior written approval by the authorized officer.

B. Notification of Sale. The holder shall immediately notify the authorized officer when a sale and transfer of ownership of the permitted improvements is planned.

C. Divestiture of Ownership. Upon change in ownership of the facilities authorized by this permit, the rights granted under this authorization may be transferred to the new owner upon application to and approval by the authorized officer. The new owner must qualify and agree to comply with, and be bound by the terms and conditions of the authorization. In granting approval, the authorized officer may modify the terms, conditions, and special stipulations to reflect any new requirements imposed by current Federal and state land use plans, laws, regulations or other management decisions.

VIII. TERMINATION

A. Termination for Higher Public Purpose. If, during the term of this permit or any extension thereof, the Secretary of Agriculture or any official of the Forest Service acting by or under his or her authority shall determine by his or her planning for the uses of the National Forest that the public interest requires termination of this permit, this permit shall terminate upon one hundred-eighty (180) day's written notice to the holder of such determination, and the United States shall have the right thereupon, subject to Congressional authorization and appropriation, to purchase the holder's improvements, to remove them, or to require the holder to remove them, at the option of the United States. The United States shall be obligated to pay an equitable consideration for the improvements or for removal of the improvements and damages to the improvements resulting from their removal. The amount of the consideration shall be fixed by mutual agreement between the United States and the holder and shall be accepted by the holder in full satisfaction of all claims against the United States under this clause: Provided, that if mutual agreement is not reached, the Forest Service shall determine the amount, and if the holder is dissatisfied with the amount thus determined to be due him may appeal the determination in accordance with the Appeal Regulations, and the amount as determined on appeal shall be final and conclusive on the parties hereto; Provided further, that upon the payment to the holder of 75% of the amount fixed by the Forest Service, the right of the United States to remove or require the removal of the improvements shall not be stayed pending the final decision on appeal.

B. Termination, Revocation and Suspension. The authorized officer may suspend, revoke, or terminate this permit for (1) noncompliance with applicable statutes, regulations, or terms and conditions of the authorization; (2) for failure of the holder to exercise the rights and privileges granted; (3) with the consent of the holder; or (4) when, by its terms, a fixed agreed upon condition, event, or time occurs. Prior to suspension, revocation, or termination, the authorized officer shall give the holder written notice of the grounds for such action and reasonable time to correct curable noncompliance.

IX. RENEWAL

A. Renewal. The authorized use may be renewed. Renewal requires the following conditions: (1) the land use allocation is compatible with the Forest Land and Resource Management Plan; (2) the site is being used for the purposes previously authorized and; (3) the enterprise is being continually operated and maintained in accordance with all the provisions of the permit. In making a renewal, the authorized officer may modify the terms, conditions, and special stipulations.

X. RIGHTS AND RESPONSIBILITIES UPON TERMINATION OR NONRENEWAL

A. Removal of Improvements. Except as provided in Clause VIII. A, upon termination or revocation of this special use permit by the Forest Service, the holder shall remove within a reasonable time as established by the authorized officer, the structures and improvements, and shall restore the site to a condition satisfactory to the authorized officer, unless otherwise waived in writing or in the authorization. If the holder fails to remove the structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States without compensation to the holder, but that shall not relieve the holder's liability for the removal and site restoration costs.

XI. MISCELLANEOUS PROVISIONS

A. Members of Congress. No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this agreement or to any benefit that may arise herefrom unless it is made with a corporation for its general benefit.

B. Inspection, Forest Service. The Forest Service shall monitor the holder's operations and reserves the right to inspect the permitted facilities and improvements at any time for compliance with the terms of this permit. Inspections by the Forest Service do not relieve the holder of responsibilities under other terms of this permit.

C. Regulating Services and Rates. The Forest Service shall have the authority to check and regulate the adequacy and type of services provided the public and to require that such services conform to satisfactory standards. The holder may be required to furnish a schedule of prices for sales and services authorized by the permit. Such prices and services may be regulated by the Forest Service: Provided, that the holder shall not be required to charge prices significantly different than those charged by comparable or competing enterprises.

D. Advertising. The holder, in advertisements, signs, circulars, brochures, letterheads, and like materials, as well as orally, shall not misrepresent in any way either the accommodations provided, the status of the permit, or the area covered by it or the vicinity. The fact that the permitted area is located on the National Forest shall be made readily apparent in all of the holder's brochures and print advertising regarding use and management of the area and facilities under permit.

E. Bonding. The authorized officer may require the holder to furnish a bond or other security to secure all or any of the obligations imposed by the terms of the authorization or any applicable law, regulation, or order.

Bonds, Performance. Use the following text, when bonding is called for: As a further guarantee of the faithful performance of the provisions of terms and conditions N/A of this permit, the holder agrees to deliver and maintain a surety bond or other acceptable security in the amount of N/A. Should the sureties or the bonds delivered under this permit become unsatisfactory to the Forest Service, the holder shall, within thirty (30) days of demand, furnish a new bond with surety, solvent and satisfactory to the Forest Service. In lieu of a surety bond, the holder may deposit into a Federal depository, as directed by the Forest Service, and maintain therein, cash in the amounts provided for above, or negotiable securities of the United States having a market value at the time of deposit of not less than the dollar amounts provided above.

The holder's surety bond shall be released, or deposits in lieu of a bond, shall be returned thirty (30) days after certification by the Forest Service that priority installations under the development plan are complete, and upon furnishing by the holder of proof satisfactory to the Forest Service that all claims for labor and material on said installations have been paid or released and satisfied. The holder agrees that all moneys deposited under this permit may, upon failure on his or her part to fulfill all and singular the requirements herein set forth or made a part hereof, be retained by the United States to be applied to satisfy obligations assumed hereunder, without prejudice whatever to any rights and remedies of the United States.

Prior to undertaking additional construction or alteration work not provided for in the above terms and conditions or when the improvements are to be removed and the area restored, the holder shall deliver and maintain a surety bond in an amount set by the Forest Service, which amount shall not be in excess of the estimated loss which the Government would suffer upon default in performance of this work.

F. Water Rights. This authorization confers no rights to the use of water by the holder. Such rights must be acquired under State law.

G. Current Addresses. The holder and the Forest Service shall keep each informed of current mailing addresses including those necessary for billing and payment of fees.

H. Identification of Holder. Identification of the holder shall remain sufficient so that the Forest Service shall know the true identity of the entity.

Corporation Status Notification:

1. The holder shall notify the authorized officer within fifteen (15) days of the following changes:
 - a. Names of officers appointed or terminated.
 - b. Names of stockholders who acquire stock shares causing their ownership to exceed 50 percent of shares issued or otherwise acquired, resulting in gaining controlling interest in the corporation.
2. The holder shall furnish the authorized officer:
 - a. A copy of the articles of incorporation and bylaws.
 - b. An authenticated copy of a resolution of the board of directors specifically authorizing a certain individual or individuals to represent the holder in dealing with the Forest Service.
 - c. A list of officers and directors of the corporation and their addresses.
 - d. Upon request, a certified list of stockholders and amount of stock owned by each.
 - e. The authorized officer may require the holder to furnish additional information as set forth in 36 CFR 251.54(e)(1)(iv).

Partnership Status Notification:

The holder shall notify the authorized officer within fifteen (15) days of the following changes. Names of the individuals involved shall be included with the notification.

1. Partnership makeup changes due to death, withdrawal, or addition of a partner.
2. Party or parties assigned financed interest in the partnership by existing partner(s).
3. Termination, reformation, or revision of the partnership agreement.
4. The acquisition of partnership interest, either through purchase of an interest from an existing partner or partners, or contribution of assets, that exceeds 50 percent of the partnership permanent investment.

I. Archaeological-Paleontological Discoveries. The holder shall immediately notify the authorized officer of any and all antiquities or other objects of historic or scientific interest. These include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts discovered as the result of operations under this permit, and shall leave such discoveries intact until authorized to proceed by the authorized officer. Protective and mitigation measures specified by the authorized officer shall be the responsibility of the permit holder.

J. Protection of Habitat of Endangered, Threatened, and Sensitive Species. Location of areas needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, as amended, or listed as sensitive by the Regional Forester under authority of FSM 2670, derived from ESA Section 7 consultation, may be shown on a separate map, hereby made a part of this permit, or identified on the ground. Protective and mitigation measures specified by the authorized officer shall be the responsibility of the permit holder.

If protection measures prove inadequate, if other such areas are discovered, or if new species are listed as Federally threatened or endangered or as sensitive by the Regional Forester, the authorized officer may specify additional protection regardless of when such facts become known. Discovery of such areas by either party shall be promptly reported to the other party.

K. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof, and any of the following clauses or any provision thereof, the preceding clauses shall control.

L. Superseded Permit. This permit replaces a special use permit issued to Heavenly Valley, Limited Partnership on November 12, 1997.

M. Disputes. Appeal of any provisions of this authorization or any requirements thereof shall be subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto. The procedures for these appeals are set forth in 36 CFR 251 published in the Federal Register at 54 FR 3362, January 23, 1989.

O. Water Rights acquired in the Name of the United States. All water rights obtained by the holder from water diversions directly from National Forest System lands for use on the area authorized must be acquired in the name of the United States.

P. Liquor Sales Authorized. The sale of intoxicating beverages is allowed by this authorization, contingent upon a valid State license for the sale or serving of alcoholic beverages.

Q. Revegetation of Ground Cover and Surface Restoration. The holder shall be responsible for prevention and control of soil erosion and gully on lands covered by this authorization and adjacent thereto, resulting from construction, operation, maintenance, and termination of the authorized use. The holder shall so construct permitted improvements to avoid the accumulation of excessive heads of water and to avoid encroachment on streams. The holder shall vegetate or otherwise stabilize all ground where the soil has been exposed as a result of the holder's construction, maintenance, operation, or termination of the authorized use and shall construct and maintain necessary preventive measures to supplement the vegetation.

R. Drinking Water Systems.

1. The holder, as the water supplier and owner or operator of the drinking water system, is responsible for compliance with all applicable Federal, State, and local drinking water laws and regulations for the operation and maintenance of a public water system. This includes, but is not limited to, developing, operating, and maintaining the system, and conducting drinking water testing and taking the appropriate corrective and follow-up actions in accordance with Federal, State, and any other applicable requirements. For the purposes of this authorization, public water systems are defined in the Safe Drinking Water Act, as amended (42 U.S.C. 300f et seq.), and in the National Primary Drinking Water Regulations, Title 40, Code of Federal Regulations, part 141 (40 CFR part 141), or by State regulations if more stringent.

2. When the permit holder operates Federally owned systems (for example, when the permit is authorized under the Granger-Thye Act), the holder shall meet additional requirements for public and nonpublic water systems consistent with FSM 7420. Requirements under FSM 7420 applicable to the permit holder are set forth in an appendix to the permit entitled "Operation of Federally Owned Drinking Water Systems" (Form FS-2700-4h-Appendix F).

3. For Federally owned systems, the holder shall notify and consult with the Forest Service within 24 hours or on the next business day after notification by the laboratory of a sample that tests positive for microbiological contamination. The holder shall notify and consult with the Forest Service within 48 hours of notification of a maximum contaminant level violation or an acute violation.

4. The holder shall retain all records as required by applicable laws and regulations. The holder agrees to make the records available to the Forest Service and to any other regulatory agency authorized to review Forest Service activities. Copies of microbiological test results for Federally owned water systems shall be forwarded monthly to the Forest Service by the 15th of the month following the sampling date. Copies of other required records for Federally owned systems shall be forwarded annually to the Forest Service within 15 days of the end of the operating season for seasonal sites or within 15 days of the end of the calendar year for year-round operations. The holder shall surrender all records for a Federally owned system to the Forest Service upon permit termination or revocation.

5. For Federally owned systems, the holder shall provide the name of the water system operator in writing to the Forest Service and notify the authorized officer within 72 hours of a change in personnel.

S. Dam Safety.

1. Definitions. The following definitions apply to this clause:

a. Qualified Engineer. An engineer authorized to practice engineering in the field of dams in the State where the dam is located, either by professional registration as provided by State law or by reason of employment by the State or Federal Government.

b. Dam Failure. Catastrophic event characterized by the sudden, rapid, and uncontrolled release of impounded water. It is recognized that there are lesser degrees of failure and that any malfunction or abnormality outside the design assumptions and parameters which adversely affect a dam's primary function of impounding water may also be considered a failure.

c. Rehabilitation or Modification. Repair of major structure deterioration to restore original condition; alteration of structures to meet current design criteria, improve dam stability, enlarge reservoir capacity, or increase spillway and outlet works capacity; replacement of equipment.

d. Hazard Potential. The classification of a dam based on the potential for loss of life or property damage that could occur if the structure failed (FSM 7500).

e. Emergency Action Plan. Formal plan of procedures to prevent or reduce loss of life and property that could occur if the structure failed. The plan does not include flood plain management for the controlled release of floodwaters for which the project is designed.

2. Dam Classification. The dam constructed pursuant to this authorization shall be classified according to its height and storage capacity (water debris or both) as well as its hazard potential as follows:

Height and Storage Capacity (A, B, C, or D)

East Peak - C

Sky Meadows - D

Hazard Potential (Low, Moderate, High):

East Peak Dam - High

Sky Meadows Dam - Low

Classification criteria are contained in FSM 7511, which the Forest Service may amend from time to time.

The provisions of sections 5 and 8 of this clause apply only to dams classified as high hazard, or as otherwise may be specifically provided for in this authorization to address special or unique circumstances.

The hazard potential of the dam shall be reassessed at least every ten years by a qualified engineer retained by the holder, and this information made available to the authorized officer. The Forest Service may change the hazard potential at any time based on changed conditions or new information.

3. Construction, Inspection, Certification, and Project Files. For construction, rehabilitation or improvement, the holder shall provide for inspection by a qualified engineer to ensure adequate control of the work being performed. At a minimum, the qualified engineer shall maintain a daily inspection diary, descriptions of design changes, and records of construction material and foundation tests.

Upon completion of construction, rehabilitation, or improvement, the holder shall forward to the Forest Service a statement from the qualified engineer responsible for inspection certifying that the works were built in accordance with the approved plans and specifications, or approved revisions thereto. No water shall be impounded until approval is given by the authorized officer.

All design notes, as-built plans, and the aforementioned diaries and records shall be maintained in a project file by the holder for the duration of this authorization, and shall be available to the Forest Service or other inspection personnel (not applicable to debris retention dams).

4. Dam Operation and Maintenance Plans. Prior to the storage of water, the holder shall have an approved plan for the operation and maintenance of the dam and appurtenant structures. The plan(s) shall, as a minimum, describe operating requirements and procedures to be followed for the operation of the structure; routine or recurring maintenance required; record keeping to be performed for operation and maintenance; and individuals responsible for implementing the plans. At the time of the operation and maintenance inspection, the plan shall be reviewed and amended as needed by the individual responsible for implementation and the engineer performing any inspection. No plans or amendments thereto shall be valid until approved by the authorized officer.

5. Dam Emergency Action Plan. The following provisions are required for certain hazard classifications identified in section 2. The holder shall, prior to storage of water, prepare an emergency action plan which will include, but not be limited to:

- a. Actions to be taken upon discovery of an unsafe condition or impending failure situation to prevent or delay dam failure, and reduce damage or loss of life from subsequent failure.
- b. Procedures for notification of law enforcement, civil preparedness, and Forest Service personnel.
- c. Procedures for notifying persons in immediate danger of losing life or property.
- d. Maps delineating the area which would be inundated by water, debris, or both in the event of dam failure.
- e. The names of those individuals responsible for activating the plan and carrying out the identified actions.

In preparing the emergency action plan, the holder shall consult and cooperate with appropriate law enforcement and civil preparedness personnel, who may be responsible for implementing all or part of the plan. Emergency action plans shall be reviewed and updated annually, and tested at intervals not exceeding five years.

6. Inspection and Maintenance of Dams. The holder shall have the dam and appurtenant structures inspected by a qualified engineer to determine the state of operation and maintenance at least every year. An inspection shall also be made following earthquakes, major storms, or overflow of spillways other than the service spillway. Two copies of the inspection report shall be provided to the authorized officer within 30 days of the date of inspection.

Repairs or operational changes recommended by the inspecting engineer shall be made by the holder within a reasonable period of time following the inspection, but in no event later than one year from the inspection (unless a longer period of repairs is authorized in writing, or a shorter period is required when such repairs are deemed by the authorized officer as immediately required for reasons of public safety). Upon request by the authorized officer, the holder shall provide a plan of action outlining planned time and methods for performing said repairs or operational changes, and notify the authorized officer when actions are completed. The authorized officer shall specify a completion date for corrective work. If corrective action is not taken by the date specified by the authorized officer, the Forest Service shall have corrective action taken and the holder shall be responsible for all costs including legal and court costs.

7. Forest Service Inspection of Dams. The holder shall allow inspection of the dam and appurtenant structures at any time by the authorized officer. Any condition adversely affecting or which could adversely affect the operation of the facility; safety of the structure or the public, or surrounding lands and resources shall, upon written notice, be corrected or changed by the holder at the holder's expense. The authorized officer shall specify a completion date for corrective work. If corrective action is not taken by the date specified by the authorized officer, the Forest Service shall have corrective action taken and the holder shall be responsible for all costs including legal and court costs. A copy of the Forest Service inspection report shall be provided to the holder.

An inspection performed by the Forest Service does not relieve the holder of the responsibility of ensuring that inspections are made in accordance with section 6 of this clause.

8. Dam Safety Evaluations. This provision is required for certain hazard classifications identified in section 2.

Beginning in 2002 and at 5-year intervals thereafter, the holder shall have a formal dam safety evaluation performed by a qualified engineer to verify the safety and integrity of the dam and appurtenant structures. The evaluation will include, but is not limited to, a detailed field inspection of the dam and appurtenant structures and a review of all pertinent documents, such as investigation, design, construction, instrumentation, operation, maintenance, and inspection records. The evaluation shall be based on current accepted design criteria and practices. The holder shall provide two copies of the evaluation report to the authorized officer and Regional Engineer. Based on this report, the authorized officer may require the holder to perform additional evaluations pursuant to such standards as the officer may define and may require rehabilitation or modification of the structure within a reasonable time.

9. Right of Action To Abate Emergency Situations. In situations where the authorized officer determines on the available facts that there is danger of a dam failure for any reason, such officer may exercise discretionary authority to enter upon the structure and appurtenances authorized herein and take such actions as are necessary to abate or otherwise prevent a failure. Such actions include, but are not limited to, lowering the level of the impounded waters utilizing existing structures or by artificial breach of the dam. In the event that such actions are taken, the United States shall not indemnify or otherwise be liable to the holder for losses or damages, including losses or damages to the structure or the value of impounded waters. The holder shall be responsible for all costs including legal and court costs. The failure of the Forest Service to exercise any discretion under this provision shall not be a violation of any duty by the United States, and shall not relieve the holder of any and all liability for damages in the event of a dam failure.

10. Liability. The activities permitted by this authorization shall be deemed a high-risk use and occupancy. Sole responsibility for the safety of the dam and associated facilities and any liability resulting therefrom shall be on the holder and his successors, agents, or assigns. Pursuant to 36 CFR 251.56(d), or its replacement,

the holder shall be liable for injury, loss, or damage resulting from this authorization regardless of the holder's fault or negligence. Maximum strict liability shall not exceed \$1,000,000.00 except as that amount may be changed in the aforementioned regulations.

In addition to all waivers and limitations on liability of the United States under this authorization, the provisions of 33 U.S.C. 702(c) shall apply to any damages from or by floods or floodwaters at any place.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archaeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Public reporting burden for this collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.